

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

HAMMER & STEEL, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:18 CV 1240 CDP
)	
SKY MATERIALS CORP.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

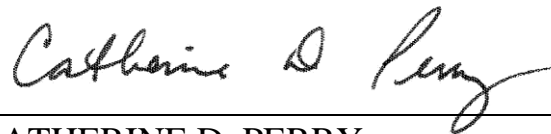
Plaintiff moves for summary judgment on its claim that defendant breached a contract to lease equipment by failing to pay amounts due and return the equipment. Even though no discovery has taken place in this newly filed case, plaintiff claims in a barebones motion that no factual disputes preclude judgment in its favor. In support of this motion, plaintiff filed a two page memorandum, an eight page statement of “undisputed” facts, and an affidavit from the plaintiff’s Vice President averring to the truth of the “undisputed” facts. Not surprisingly, defendant opposes summary judgment on the ground that the facts are very much disputed and that the parties have had no opportunity to conduct discovery to demonstrate the nature and extent of the discovery disputes. For its part, defendant submits an affidavit from its President which disputes material facts alleged by plaintiff in support of its motion.

Plaintiff's motion for summary judgment will be denied, as it has not demonstrated that the undisputed facts entitle it to judgment as a matter of law as required by Fed. R. Civ. P. 56(a). While plaintiff may ultimately be able to demonstrate that it is entitled to summary judgment after sufficient opportunity to conduct discovery has taken place, it has not met this burden at this early stage in the proceedings. I urge the parties to engage in good faith settlement negotiations, as this case is one that could and should be resolved.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment [23] is denied.

IT IS FURTHER ORDERED that defendant's motion to continue [29] is denied as moot.

A handwritten signature in cursive script, reading "Catherine D. Perry", is positioned above a horizontal line.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 15th day of November, 2018.